

Supreme Court, U. S.

F I L E D

FEB 22 1977

MICHAEL RODAK, JR., CLERK

**APPENDIX**

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**Supreme Court of the United States**

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**October Term, 1976**

**No. 76-577**

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**HUGO ZACCHINI,**  
*Petitioner,*

**VS.**

**SCRIPPS-HOWARD BROADCASTING COMPANY,**  
*Respondent.*

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**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO**

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**Petition for Certiorari Filed October 23, 1976  
Certiorari Granted January 10, 1977**

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No. 73 918826

**In the Court of Common Pleas**

CUYAHOGA COUNTY, OHIO

**HUGO ZACCHINI,**

*Plaintiff,*

vs.

**SCRIPPS-HOWARD COMPANY,**

*Defendant.*

**RELEVANT DOCKET ENTRIES**

- |                 |  |
|-----------------|--|
| July 2, 1973    | Complaint with jury demand filed and summons sent certified mail to defendant                          |
| July 11, 1973   | Certified mail Receipt No. 41213439 Returned by U.S. Postal Dept.<br>Mail received by Addressee 7-6-73 |
| October 2, 1973 | Answer of defendant filed  |
| March 11, 1974  | Motion for leave to file Motion for Summary Judgment filed by defendant                                |
| April 15, 1974  | Brief in Opposition to Defendant's Motion for Summary Judgment filed                                   |
| April 30, 1974  | To Court. Defendant's motion for summary judgment granted. O.S.J.                                      |
| May 17, 1974    | Notice of appeal filed by plaintiff<br>Copy mailed to appellee   |

June 26, 1974 Record on appeal filed and notice issued to all parties

June 26, 1974 Transcript of proceedings filed by appellant

August 27, 1975 To Court. Judgment of the Common Pleas Court is reversed. See Journal

August 19, 1976 Judgment of Court of Appeals is reversed and judgment of Common Pleas is reinstated

**Cuyahoga County Court of Appeals Docket  
Case No. 33713**

May 17, 1974 Appeal by Hugo Zacchini, Plaintiff-Appellant, Jan. Term, 1974, Notice of Appeal filed

June 26, 1974 Record on appeal filed and notice issued to all parties

August 23, 1974 Brief and Assignment of Errors of Plaintiff-Appellant

September 12, 1974 Brief of Appellee

August 26, 1975 Judgment of Common Pleas Court reversed and remanded for further proceedings  
Appellee to pay costs. Mandate to issue. Appellee excepts

September 24, 1975 Notice of appeal to the Supreme Court of Ohio filed by appellant

**Supreme Court of the State of Ohio Docket  
Case No. 75-995**

October 24, 1975 Notice of Appeal and Certificate of Service filed

October 27, 1975 Memo of Appellant and Certificate of Service filed

November 24, 1975 Memo of Appellee filed and A.P.S.

December 5, 1975 Order to Certify Record sent—Clerk of Courts

December 5, 1975 Cause docketed on its merits

December 5, 1975 Motion to Certify Record allowed

December 29, 1975 Original papers filed

January 28, 1976 Printed record filed

February 9, 1976 Brief of Appellant and Certificate of Service filed

March 8, 1976 Brief of Appellee filed

July 28, 1976 Judgment reversed

August 5, 1976 Original papers B.E. sent to Clerk

August 17, 1976 Certified copy of entry sent to Clerk

August 17, 1976 Mandate issued

January 18, 1977 Entry from U.S. Supreme Court filed, Certiorari allowed

No. 73 918826  
 IN THE COURT OF COMMON PLEAS  
 CUYAHOGA COUNTY, OHIO

HUGO ZACCHINI,  
*Plaintiff,*

vs.

WEWS SCRIPPS HOWARD BROADCASTING CO.,  
*Defendant.*

**COMPLAINT**

(Filed in Common Pleas Court July 2, 1973)

1. Now comes the plaintiff and says that WEWS Scripps Howard Broadcasting Company is a duly organized corporation, existing pursuant to law, and at all times herein mentioned, was engaged in the television broadcasting business.

2. Plaintiff says that he is engaged in the entertainment business and that the act which he performs is an act which was invented by his father and has been performed only by his family for the last fifty years.

3. While performing at the Burton Fair, he was approached by an employee of the defendant with regard to filming his performance, at which time, he requested that his performance not be filmed.

4. Plaintiff further says that on or about the 1st day of September, 1972, an employee of the defendant filmed the plaintiff's entire act, while he was performing at the Burton Fair, and subsequently, showed the film on defendant's T.V. Station in Cleveland, Ohio.

5. Plaintiff further says that the defendant showed and commercialized the film of his act without his consent and such conduct by the defendant was an unlawful appropriation of plaintiff's professional property.

WHEREFORE, plaintiff demands judgment against the defendant in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) together with all costs of suit.

A TRIAL BY JURY IS HEREBY REQUESTED.

/s/ John G. Lancione  
 Spangenberg, Shibley, Traci & Lancione  
 1500 National City Bank Building  
 Cleveland, Ohio 44114  
*Of Counsel*

IN THE COURT OF COMMON PLEAS  
 CUYAHOGA COUNTY, OHIO

(Title omitted in printing)

**ANSWER**

(October 2, 1973)

**FIRST DEFENSE**

1. Defendant, Scripps-Howard Broadcasting Company, incorrectly designated as "WEWS Scripps-Howard Broadcasting Co.," admits and avers that it is a corporation organized under and existing by virtue of the laws of the State of Ohio and at all times mentioned in the complaint was engaged in the business of TV broadcasting.

2. Defendant says that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 2 of the complaint.

3. Defendant admits that plaintiff was at the Burton Fair, but denies each and every other allegation made and contained in paragraph 3 of the complaint.

4. Defendant admits that a news cameraman filmed the plaintiff on or about September 1, 1972, and that such film was subsequently shown on Channel 5 - WEWS, but denies each and every other allegation made and contained in paragraph 4 of the complaint.

5. Defendant denies each and every allegation made and contained in paragraph 5 of the complaint.

#### SECOND DEFENSE

6. Defendant avers that the complaint fails to state a claim upon which relief can be granted.

#### THIRD DEFENSE

7. For its third defense, defendant incorporates herein all of the allegations, averments, statements, admissions and denials contained in its first defense.

8. Defendant avers that the citizens of the State of Ohio have a general public interest in the activities being conducted at Fairs and particularly those of the Burton Fair, and that it is an important function and duty of a TV station to report matters of general public interest and the right to report such activities is guaranteed by the rights of freedom of speech and freedom of the press as contained in the Constitution of the United States and the State of Ohio.

9. The showing of the film complained of related to matters of general public interest and were shown without malice and within the rights guaranteed to the defendant by the Constitution of the United States and the

State of Ohio and was, therefore, constitutionally privileged.

/s/ Don H. Pace  
 Baker, Hostetler & Patterson  
 1956 Union Commerce Building  
 Cleveland, Ohio 44115  
*Attorneys for Defendant*

IN THE COMMON PLEAS COURT  
 CUYAHOGA COUNTY, OHIO

(Title Omitted in Printing)

**MOTION FOR SUMMARY JUDGMENT BY  
 DEFENDANT, SCRIPPS-HOWARD  
 BROADCASTING COMPANY**

(March 11, 1974)

Defendant, Scripps-Howard Broadcasting Company (incorrectly designated in plaintiff's complaint as WEWS Scripps-Howard Broadcasting Co.), by and through its attorneys and pursuant to Civil Rule 56(B), respectfully moves this Court to enter summary judgment in favor of its dismissing the action on the ground that there is no genuine issue as to any material fact and that this defendant is entitled to judgment as a matter of law on the grounds and for the reasons stated in the brief attached hereto.

The motion is based upon the Affidavits of George J. Masur and David F. Patterson attached hereto marked Exhibits A and B respectively.

/s/ Don H. Pace

/s/ Lawrence V. Lindberg

1956 Union Commerce Building  
Cleveland, Ohio 44115  
621-0200

*Attorneys for Defendant, Scripps-  
Howard Broadcasting Company*

*Of Counsel:*

Baker, Hostetler & Patterson

1956 Union Commerce Building  
Cleveland, Ohio 44115  
621-0200

**EXHIBIT A**

**Affidavit of George J. Masur**

George J. Masur, being duly sworn deposes and says:

1. I am now employed as staff news writer with the defendant Scripps-Howard Broadcasting Company. I have personal knowledge of the matters hereinafter set forth and make this affidavit in support of the within motion.

2. In my professional capacity as a news reporter I use the name Jay Bacchus rather than my legal name of George J. Masur.

3. That during August and September of 1972 I was employed by defendant as a free lance news reporter and cameraman (also referred to as a "news stringer").

4. While employed as a news stringer, I submitted ideas for news stories to defendant's news management personnel who, if they accepted the idea, would direct me to cover the event or story. At other times, news management personnel of defendant would, on their own initiative, direct me to cover a particular news event or story.

5. On or about August 30, 1972 I attended the Burton Fair in the hope of finding a newsworthy event which could be used by WEWS on its news programs. As is my custom I carried with me a small movie camera supplied by the defendant.

6. While in attendance at the fair, I witnessed plaintiff's performance. His act consisted of him being shot out of a cannon into a net located approximately 200 feet away.

7. Plaintiff performed in a fenced-in track area which was surrounded by grandstands. There was no separate admission charge for his performance and his act was witnessed by members of the general public in attendance at the fair.

8. Prior to his performance, on or about August 30, 1972, plaintiff approached me and inquired about my camera, my occupation and my purpose for being at the fair.

9. On or about August 30, 1972 plaintiff requested that his act not be filmed. I informed him that I was attempting to develop film to attract the public's attention to the fair and that although I did not intend to do so that day he had no right to restrict my right to film a newsworthy event.

10. On September 1, 1972, in response to inquiries made by Robert Feldman, producer of defendant's Eyewitness News Program, I mentioned that plaintiff's act had generated substantial public interest at the Burton Fair but that Zaccini had requested that the act not be filmed.

11. On September 1, 1972, Robert Feldman directed me to cover the attractions at the Burton Fair and to film plaintiff's act.

12. On September 1, 1972, I again went to the Burton Fair at which time I shot footage of plaintiff's performance. The film was submitted to defendant for use on that evening's eleven o'clock Eyewitness News Program.

13. On both occasions when I attended the Burton Fair, I entered the fairgrounds without being required to pay any admission charge. News reporters and cameramen are admitted to the fair by its promoters without charge in order to permit news coverage and generate publicity for the fair.

14. At no time while I was in attendance at the Burton Fair did any fair official or any person other than plaintiff request or demand that I not cover the Burton Fair or that I not film all or portions of the events and activities of the fair.

Further affiant sayeth not.

/s/ George J. Masur

(Jurat omitted)

## **EXHIBIT B**

### **Affidavit of David F. Patterson**

David F. Patterson, being duly sworn deposes and says:

1. I have personal knowledge of the matters herein-after set forth and make this affidavit in support of the within motion.

2. I am employed by the defendant Scripps-Howard Broadcasting Company as co-anchorman on defendant's eleven o'clock Eyewitness News Program.

3. On or about September 1, 1972, during the eleven o'clock Eyewitness News Program of WEWS, a fifteen second news film clip of plaintiff's act was televised.

4. While the film clip of plaintiff's act was being shown I read the script, a true copy of which is attached hereto as Exhibit B-1.

Further affiant sayeth not.

/s/ David F. Patterson

(Jurat omitted)

**EXHIBIT B-1**

Transcript of Script Relating to Film Clip of The Fabulous Zacchini Read by David F. Patterson on Defendant's Eyewitness News Program on September 1, 1973:

This . . . now . . . is the story of a true spectator sport . . . the sport of human cannonballing . . . in fact, the great Zacchini is about the only human cannonball around, these days . . . just happens that, where he is, is the Great Geauga County Fair, in Burton . . . and believe me, although it's not a long act, it's a thriller . . . and you really need to see it in person . . . to appreciate it. . . .

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

(Title Omitted in Printing)

**JUDGMENT ENTRY OF THE COURT  
OF COMMON PLEAS**

(Dated April 29, 1974)

Judgment for Defendant.

**COURT OF APPEALS OF OHIO  
EIGHTH APPELLATE DISTRICT**

(Title Omitted in Printing)

**JOURNAL ENTRY OF THE COURT OF APPEALS**

(Dated July 10, 1975)

This cause came on to be heard upon the pleading and the transcript of the evidence and record in the Common Pleas Court, and was argued by counsel; on consideration whereof, the court certifies that in its opinion substantial justice has not been done the party complaining, as shown by the record of the proceedings and judgment under review, and judgment of said Common Pleas Court is reversed. Each assignment of error was reviewed by the court and upon review the following disposition made:

See Opinion Incorporated in This Journal Entry by Reference. See Also MANOS, J., Concurring Opinion.

No other error appearing in the record, this cause is reversed and remanded to the Common Pleas Court for further proceedings in accordance with this opinion.

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

(Title Omitted in Printing)

**JUDGMENT ENTRY OF THE COURT OF COMMON  
PLEAS RE SUMMARY JUDGMENT**

(Dated April 29, 1974)

Defendant's Motion for Summary Judgment granted.

It is, therefore, considered that said appellant recover of said appellee his costs herein.

It is ordered that a special mandate be sent to said Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

/s/ Jack G. Day  
*Presiding Judge*

**DAY, P.J., MANOS, J., Concurs in Judgment Only**

(See Concurring Opinion)

**PARRINO, J., Concurs**

**COURT OF APPEALS OF OHIO  
EIGHTH APPELLATE DISTRICT**

(Title Omitted in Printing)

#### **OPINION OF THE COURT OF APPEALS**

##### **Note:**

The Opinion of the Court of Appeals is printed in the Petition for Certiorari at page A27.

**IN THE SUPREME COURT OF OHIO**  
(Title Omitted in Printing)

#### **JUDGMENT ENTRY OF THE SUPREME COURT OF OHIO**

(Decided July 28, 1976)

Judgment reversed.

**IN THE SUPREME COURT OF OHIO**

(Title Omitted in Printing)

#### **OPINION OF THE SUPREME COURT OF OHIO**

##### **Note:**

The Opinion of the Ohio Supreme Court is printed in the Petition for Certiorari at page A2.